

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
Case No.: 9:23-cv-81150-RLR

ANDREW TATE AND TRISTAN TATE,

Plaintiffs

vs.

EMMA GABBEY, et al.,

Defendants.

/

**DEFENDANTS' MOTION TO STRIKE PLAINTIFFS'
NOTICE OF INTENT [DE 42] AND SUR-REPLY [DE 43]**

Defendants, EMMA GABBEY, MONA TABARA GABBEY, WILLIAM GABBEY, and MATTHIEU MARTELLY, by and through the undersigned counsel, move that this Court strike Plaintiffs' Notice of Intent filed yesterday on September 15, 2023 [DE 42] (the "Notice") and the document styled as Plaintiffs' Surresponse to Defendants' Reply to Plaintiffs' Opposition to Defendant's Motion to Proceed Under Pseudonym [DE 43] (the "Sur-Reply") for the grounds stated below.

I. BACKGROUND

On July 11, 2023, Defendants were sued by Plaintiffs in state court for defamation and false imprisonment. Recognizing the improper joining of some Defendants, Defendants removed the case to this Court on August 14, 2023. The pleadings and subsequent filings of the parties demonstrate that sensitive matters, including sex trafficking, are at the heart of this litigation. The tenor of the filings reflects that sensitivity.

But so do the substance of the filings: Defendants filed their pending motion for leave to proceed under pseudonym and for partial seal and protective order on September 8, 2023 [DE 29]

due to the harassment they have and are likely to face, due to the kind of support Plaintiffs engender through social media. As the Court noted in its expedited briefing order [DE 38], the relief sought is exceptional. But, Defendants believe, so are their circumstances.

Pursuant to this Court's expedited briefing order, Plaintiffs filed their response in opposition on September 14, 2023 [DE 39]. Since the expedited briefing order did not preclude Defendants from filing a reply to that response, they did so on September 15, 2023 [DE 41]. Our local rules permit the filing of such a reply. *See Local Rule 7.1(c)(1)* ("The movant may, within seven (7) days after service of an opposing memorandum of law, file and serve a reply memorandum in support of the motion....")

II. PLAINTIFFS' PROHIBITED FILINGS

What our local rules do not permit, by contrast, is any "further or additional memoranda of law.... without prior leave of Court." *Id.* It is not a difficult rule to follow. Whatever Plaintiffs' motives for doing so, they must seek leave of the Court to file their Sur-Reply. Because this is required, the Notice is also an impermissible filing for which Plaintiffs' counsel had no authority. It is, in essence, a nullity since such notice operates to put the Court on notice of something that is simply not permitted. Neither was filed on or styled as an emergency filing and neither was requested by this Court.

In the Southern District of Florida, filings such as the Sur-Reply are routinely stricken when the filer has not received leave of the Court. *See La Gorge Palace Condo Ass'n, Inc. v. QBE Ins. Corp.*, 733 F. Supp. 2d 1332, 1334 (S.D. Fla. 2010); *see also United States v. Solomons*, 06-80733-CIV, 2007 WL 2904144, at *1 (S.D. Fla. Oct. 3, 2007) (court declining to consider an unauthorized sur-reply). This is true even when *pro se* litigants file such unauthorized sur-replies. *Burger v. Hartley*, 11-62037-CIV, 2012 WL 12837901, at *1 (S.D. Fla. Aug. 30, 2012). It should

not be any less true for experienced attorneys intentionally violating the local rules and putting all on notice of an intention to violate local rules. Other district courts around the United States follow the same practice with the same rule. *See, e.g., Humphries v. Williams Nat. Gas Co.*, 96-4196-SAC, 1998 WL 982903, at *1 (D. Kan. Sept. 23, 1998).

Finally, both the Notice and Sur-Reply contain a “Certificate of Good Faith Conferral” in which it is represented that under L.R. 7.1(a)(3)(A), counsel “conferred with all parties affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to resolve the issues.” To the contrary, neither of Plaintiffs’ counsel conferred or, to the best of Defendants’ counsel’s knowledge, sought to confer regarding the Notice or Sur-Reply. It is difficult to understand why the certificate is appended to either the Notice or Sur-Reply, as the local rules do not require conferral regarding a notice or a sur-reply, but to the extent that it may be construed as some kind of conference occurring regarding the filings, the representations are in fact false.

III. CONCLUSION

The case before the Court is important and Defendants earnestly hope that they can vindicate their rights and defenses under the protection of federal court. Part of the benefit of such venue is the consistent application of the rules of civil procedure, both federal and local. *See Fed. R. Civ. P. 1* (“[the rules] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”) Toward those ends, striking of unauthorized filings, especially those that do not advance the Court’s consideration of the underlying matters, is appropriate.

WHEREFORE, Defendants respectfully request that this Court strike the Notice and Sur-Reply.

DATED: September 16, 2023.

NATIONAL CENTER ON SEXUAL EXPLOITATION

/s/ Danielle Bianculli Pinter

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CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), I hereby certify that I conferred with counsel for Plaintiffs, Thomas Maniotis, Esq., on September 16, 2023 by phone at 12:00pm. Plaintiffs oppose the relief sought in this Motion.

/s/ Christian W. Waugh

Christian W. Waugh

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Christian W. Waugh

Christian W. Waugh [FBN 71093]